

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NORTH DAKOTA

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In Re: Bankruptcy No. 17-30112  
Vanity Shop of Grand Forks, Chapter 11  
Inc., d/b/a Vanity,  
Debtor.

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BEFORE THE HONORABLE SHON HASTINGS  
United States Bankruptcy Judge

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TRANSCRIPT OF PROCEEDINGS

MARCH, 2017

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P-R-O-C-E-E-D-I-N-G-S

THE COURT: Good morning. The case before the court this morning is Bankruptcy Case No. 17-30112, In Re: Vanity Shop of Grand Forks, Inc. And the issue before the court are the final hearings on the first stay motions.

Will the parties please make their appearance for the record. Let's begin with those appearing by telephone.

MS. WENCIL: Your Honor, Sarah Wencil appearing for the U.S. Trustee.

MR. ROTHMAN: Good morning, Your Honor. Donald Rothman, Riemer & Braunstein, on behalf of Wells Fargo.

MR. GOLD: Good morning, Your Honor. Ronald Gold, Frost, Brown, Todd, on behalf of Washington Prime Group.

MR. BRANCH: Good morning, Your Honor. Dustin Branch, Ballard Spahr, LLP, on behalf of Centennial Real Estate Company, Southgate Mall Associates, ST Mall Owner, Starwood Retail Partners, LLC, and the Macerich Company.



1 MR. BOGHOSIAN: Good morning,  
2 Your Honor. Robert Boghosian from Cohen,  
3 Tauber, Spievack & Wagner on behalf of Tiger  
4 Capital Group.

5 MR. CONWAY: Your Honor, Andrew  
6 Conway on behalf of the Taubman Landlords.

7 THE COURT: Are there any other  
8 parties appearing by telephone? Okay. We  
9 have the video conference working. Was  
10 somebody supposed to join us by video  
11 conference? Okay. All right. So then we're  
12 in Fargo.

13 MR. BRAKKE: As debtor's  
14 counsel, Your Honor, John Brakke and Caren  
15 Stanley, and as representatives of the debtor,  
16 Micky Quinn, Jill Machenbacher, and Lowell  
17 Patrell (phonetic).

18 MR. FOX: Good morning, Your  
19 Honor. My name is Steven Fox. I'm a  
20 principal of Fox Law Corporation. My client  
21 is Anfield, A-N-F-I-E-L-D, Anfield Apparel  
22 Group, a creditor with an unsecured claim and  
23 also a reclamation claim of record.

24 MS. BARRAGRY: And, Your Honor,  
25 if I may, Ellie Barragry on behalf -- or with



1 Fox, Rothschild on behalf of the Committee of  
2 Unsecured Creditors. And my colleague, Mette  
3 Kurth, as you saw, was going through security  
4 and that chair is open and waiting for her.

5 THE COURT: Okay. All right.  
6 Your last name again?

7 MS. BARRAGRY: Barragry,  
8 B-A-R-R-A-G-R-Y.

9 THE COURT: And the person  
10 who's going through security, will you repeat  
11 that name again?

12 MS. BARRAGRY: Mette Kurth,  
13 M-E-T-T-E, K-U-R-T-H.

14 THE COURT: Okay.

15 MR. SINCLAIR: Attorney Brad  
16 Sinclair, local counsel for Tiger Capital  
17 Group, LLC.

18 THE COURT: Okay. You are  
19 Ms. Kurth?

20 MS. KURTH: I am. Sorry, I got  
21 lost (inaudible).

22 THE COURT: I'll give you a  
23 minute to get ready if you'd like.

24 While we are waiting, Mr. Brakke, I  
25 think I will look to you. I received a couple



1 of proposed orders. And I noticed -- and I'm  
2 very grateful that you filed them in the  
3 context of a notice so that all parties could  
4 review the redlined versions of several orders  
5 so that we would all know what suggestions  
6 that debtor would have for revising interim  
7 orders to final orders.

8 I saw that there were five of them but  
9 there are more than five interim orders. And  
10 my question to the debtors is, are the other  
11 orders relatively acceptable except for the  
12 words interim and the like or were you  
13 drafting other suggestions for proposed  
14 orders?

15 MR. BRAKKE: Your Honor, I  
16 believe that on the four other motions which  
17 are utilities, insurance, taxes, and wages,  
18 draft final order were also submitted at the  
19 same time as the motions and we thought that  
20 those were in acceptable form.

21 THE COURT: Okay. All right.  
22 So I'll take a look at the proposed final  
23 orders to see how they differ from my interim  
24 orders and make a comparison that way. All  
25 right.



1 I think what I will do is take the more  
2 difficult issues first. And by difficult, I  
3 just simply mean those orders where there are  
4 objections to the entry of a final order at  
5 least in the form proposed.

6 And I think I'd like to begin with cash  
7 collateral. I notice that the affidavit, the  
8 declaration of Jill Machenbacher had mentioned  
9 that the secured creditor who had liens  
10 against cash collateral, Wells Fargo, was  
11 likely paid in full while there was a  
12 suggestion that -- in the objection that they  
13 were likely paid in full, and the declaration  
14 clarified that there was sufficient earnings  
15 to pay them in full and that the only thing  
16 that was left remaining were escrowed funds  
17 that were available in the event that there  
18 were claims in the future.

19 So, in essence, Wells Fargo was paid in  
20 full; is that right?

21 MR. BRAKKE: There are two  
22 matters remaining with Wells Fargo, Your  
23 Honor. There's Wells Fargo's claim for  
24 attorneys' fees and costs and then there is  
25 Wells Fargo's claim for adequate protection



1 with respect to Wells Fargo's agreement to  
2 allow the debtor's personnel to continue to  
3 use Wells Fargo credit cards.

4 I spoke to Mr. Rothman this morning,  
5 Your Honor. The draft final order provides  
6 for an escrow amount, I believe, of \$95,000.  
7 The debtor and Wells Fargo have agreed that  
8 that amount will be increased to \$103,000,  
9 Your Honor. And that will be accepted by  
10 Wells Fargo as adequate protection with  
11 respect to its remaining potential claims for  
12 attorneys' fees and costs and the potential  
13 contingent claim with respect to future use of  
14 the credit cards.

15 And with that, Your Honor, Wells Fargo  
16 will agree that it has been fully paid subject  
17 to retaining its rights in the monies escrowed  
18 and that Wells Fargo will have no further  
19 claim with respect to cash collateral use by  
20 the debtor and will terminate all its filings.

21 THE COURT: Okay. All right.

22 MR. ROTHMAN: Your Honor, this  
23 is Donald Rothman. Just one issue with that.  
24 On the termination of the lien, we would  
25 customarily maintain our lien until the



1 expiration of the challenge period from the  
2 committee. I don't believe it interferes  
3 obviously with the sale since sales of  
4 inventory are made free and clear of our lien,  
5 but I wouldn't want there to be any  
6 misunderstanding that if we incur an  
7 obligation that was reimbursable by the debtor  
8 to Wells Fargo, that we had somehow waived our  
9 priority to receive reimbursement for those  
10 amounts.

11 MR. BRAKKE: Debtor agrees with  
12 that point, Your Honor.

13 THE COURT: Okay. All right.  
14 So is there language?

15 MR. BRAKKE: That will require  
16 a slight adjustment to the draft final order,  
17 and I will work on that with Mr. Rothman, Your  
18 Honor.

19 THE COURT: Okay. The cash  
20 collateral order that -- the proposed order,  
21 proposed final order has a lot of language in  
22 it suggesting continuing use of cash  
23 collateral, but if Wells Fargo is willing to  
24 satisfy its liens, it no longer has an  
25 interest in cash collateral. So are you



1 considering a substantial pare down of the  
2 order in its current form?

3 MR. BRAKKE: I was not, Your  
4 Honor. And the Court has probably noted that  
5 I -- a number of provisions in the interim  
6 order were eliminated.

7 THE COURT: Yes.

8 MR. BRAKKE: The revised  
9 proposed final order protects, as I think it  
10 should, the fact that Wells Fargo allowed use  
11 of cash collateral until last week when they  
12 were paid in full. And those provisions need  
13 to stay because that was consistent with what  
14 Wells Fargo allowed. And we're not changing  
15 that fact, Your Honor.

16 The remaining provisions, Your Honor, I  
17 believe are qualified. With respect to the  
18 extent the debtor continues to use Wells  
19 Fargo's cash collateral, these provisions will  
20 apply. So I believe the draft final order is  
21 properly qualified in those respects, Your  
22 Honor.

23 THE COURT: Okay. I will --

24 MR. KURTH: Your Honor, we had  
25 some comments as well on the committee side if



1 I may.

2 THE COURT: You may when I  
3 finish.

4 MR. KURTH: Sorry. I thought  
5 you were --

6 THE COURT: Don't worry. I'll  
7 get to you. I promise.

8 MR. KURTH: Okay.

9 THE COURT: Okay. So I will  
10 look at it more carefully to make sure that I  
11 understand that -- what's not clear to me was  
12 that you had qualified the language in a way  
13 that ensures that going forward debtor's use  
14 of cash -- us of cash is not contingent upon  
15 an agreement with Wells Fargo.

16 One question I had, Mr. Brakke was  
17 whether there was any other creditor who had  
18 an interest in cash collateral. I assume not  
19 because I hadn't heard about it.

20 MR. BRAKKE: There is an entity  
21 by the name of TGC, Your Honor.

22 THE COURT: Okay.

23 MR. BRAKKE: Potentially has an  
24 interest. However, TGC has agreed the debtor  
25 may use its cash without restrictions, that



1 TGC makes no claim to cash collateral  
2 protection.

3 THE COURT: Okay. And no other  
4 creditor?

5 MR. BRAKKE: Correct.

6 THE COURT: That has an  
7 interest. Okay. All right.

8 So the concerns that were expressed by  
9 Wells Fargo a moment ago, those have not yet  
10 been included in this language or have not yet  
11 been clarified in this language?

12 MR. BRAKKE: I think clarified,  
13 Your Honor, is the point.

14 THE COURT: All right. Can you  
15 direct me to the paragraph where you --

16 MR. BRAKKE: I believe the  
17 concern would be with paragraph 13 of the  
18 revised marked up order, Your Honor. And it  
19 speaks of Wells Fargo terminating its liens  
20 and security interest. I believe  
21 Mr. Rothman's point is that Wells Fargo would  
22 be entitled to retain its filings but that  
23 Wells Fargo would agree that at present it has  
24 no -- there are no restrictions on the  
25 debtor's use of its cash inventory, et cetera.



1 MR. ROTHMAN: This is Donald  
2 Rothman. That's correct, Your Honor.

3 THE COURT: So, Mr. Rothman,  
4 Wells Fargo wouldn't satisfy its lien until  
5 all claim periods have expired?

6 MR. ROTHMAN: That's correct.  
7 For example, we've had cases, Your Honor,  
8 where the committee undertakes discovery or  
9 whatever it might be and we incur further  
10 obligations. And we would just like to  
11 maintain our reimbursement obligation priority  
12 with our first priority security interest.

13 THE COURT: Okay. Okay.  
14 That's very helpful. All right. Ms. Kurth.

15 MR. KURTH: Thank you, Your  
16 Honor. I didn't mean to interrupt. I thought  
17 you were winding down.

18 We had similar concerns, I think,  
19 procedurally to the concerns that you had  
20 echoed. And there were some areas where  
21 procedurally, in terms of the cash collateral  
22 order, we felt that it wasn't entirely clear  
23 what was being maintained on a go forward  
24 basis that was no longer relevant and that  
25 Wells Fargo is exiting. But substantively, we



1 have no problems with anything that they are  
2 discussing or describing. We just wanted to  
3 maintain our ability to review and comment on  
4 the specific form of order as its revised and  
5 make sure that all of that is clear.

6 Also, to make you aware, we have asked  
7 the debtor -- yesterday we had very good  
8 conversation with them, although a short one,  
9 yesterday with the debtor and we ask that the  
10 committee be allowed to receive reporting,  
11 either the reporting that Wells Fargo has  
12 already received or to the extent that Wells  
13 Fargo is receiving reporting, that we receive  
14 the same reporting.

15 I understand that they will likely no  
16 longer be sending reporting to Wells Fargo,  
17 and we had a proposal for the debtor to  
18 provide the committee with a streamline form  
19 of reporting so we could see their budget to  
20 actual performance in real time since the  
21 committee, with the exit of Wells Fargo, is  
22 really the primary economic party in interest  
23 here.

24 We don't have a formal answer back, but  
25 I think it would be fair to say they were



1       receptive to that but wanted to see the exact  
2       language proposal. So that is something we  
3       would like to see in the cash collateral order  
4       as well.

5                   THE COURT: Okay. So tell me  
6       the creditors committee's -- I mean, I  
7       understand that you have an interest in any,  
8       you know, excess proceeds. I completely  
9       understand that baseline interest, but its use  
10      of cash collateral, so since the creditor's  
11      committee doesn't have a lien against cash  
12      collateral. You certainly want and need  
13      reporting requirements, but why do I -- why  
14      should I include that in a cash collateral  
15      order?

16                   MR. KURTH: Well, it is  
17      commonly done, Your Honor, especially in a  
18      situation where the bank is receiving ongoing  
19      reporting because that's simply --

20                   THE COURT: Because it has an  
21      interest in cash collateral.

22                   MR. KURTH: Because it has an  
23      interest --

24                   THE COURT: -- has a lien  
25      against it.



1 MR. KURTH: Exactly. And so  
2 the committee will typically request that it  
3 receive the same reporting as a way for it to  
4 stay up to date and current with respect to  
5 the case. And it's a lot cheaper, a lot more  
6 efficient than going through 2004 examinations  
7 and taking more adversarial posture.

8 So while it's not our cash collateral  
9 order, that is routinely granted in connection  
10 with these types of orders.

11 It's a little more unusual because  
12 Wells Fargo is exiting and so may not be  
13 receiving reporting, but we wanted some  
14 assurance that the debtor would receive  
15 similar, although curtailed, real-time  
16 reporting as far as how this liquidation is  
17 going. It's something that is expedient.  
18 It's a lot cheaper and a lot more efficient  
19 than going through 2004 processes and taking  
20 up a litigation posture. My understanding was  
21 that the debtor was amenable to something like  
22 that.

23 THE COURT: I agree that it is  
24 helpful and convenient. I'm not surprised  
25 that it's included in other court's orders.



1 My question to you is why should I  
2 include it? If the debtor is willing to  
3 provide it in the context of the case and it's  
4 necessary, absolutely necessary that the  
5 creditors committee be advised, I'm trying to  
6 understand the authority. It's a learning  
7 experience for me as well as an interest in  
8 understanding the scope of an order.

9 MR. KURTH: Right.

10 THE COURT: So I will ensure  
11 that the debtor reports. I'm trying to  
12 understand the authority for me ordering the  
13 reporting in the context of a cash collateral  
14 order.

15 MR. KURTH: Well, I guess it  
16 generally comes in as a form of stipulated  
17 agreement between the bank and the debtor and  
18 the committee and that's -- that's how it's  
19 placed here. I can't say that I've ever had  
20 this question raised before but I understand  
21 your point as a matter of legal authority. I  
22 guess our other alternative, as I said, would  
23 be to file a 2004 motion and deal with it that  
24 way. The debtor was amenable, so -- but we  
25 can.



1 THE COURT: And if the debtor  
2 is amenable, I'm relieved to hear it. So I'll  
3 turn to Mr. Brakke.

4 Are you going to continue to provide  
5 the creditors committee the same type of  
6 reporting that you've provided to Wells Fargo?

7 MR. BRAKKE: The reports that  
8 were provided to Wells Fargo, Your Honor, were  
9 special reports not kept in the ordinary  
10 course of business. And, frankly, it was  
11 expensive to provide those reports. Since  
12 cash collateral use is no longer an issue, we  
13 have no further reporting obligations to Wells  
14 Fargo and so we see no point to incurring that  
15 expense.

16 We did receive an email from counsel  
17 for the unsecured creditors committee, more  
18 exactly the financial account that they may be  
19 retaining, asking for some, I would say,  
20 relatively modest financial reports. We think  
21 that we can accommodate those requests without  
22 undue expense to the estate, Your Honor, and  
23 we're happy to consider those requests.

24 But as a practical matter, Your Honor,  
25 this is a cash collateral motion. What the



1 unsecured creditors are requesting has no  
2 relationship to a cash collateral motion.

3 There is no authority in the court to grant  
4 the requested relief sought by the unsecured  
5 creditors committee, and if they want reports  
6 that they don't think are being provided, they  
7 can certainly file the appropriate motion with  
8 the court when and if that ever becomes an  
9 issue.

10 THE COURT: Well, I hope it  
11 doesn't become an issue. I hope there is  
12 information flowing back and forth. But  
13 Mr. Brakke is right. I --

14 MR. KURTH: Okay.

15 THE COURT: You know, this  
16 context of cash collateral order is really not  
17 the place.

18 MR. KURTH: That's fine. We  
19 will proceed by way of 2004 motion.

20 THE COURT: I think what you  
21 should proceed is the way you have been  
22 proceeding which is asking the debtors for the  
23 information and that -- I anticipate they will  
24 happily provide is what I --

25 MR. KURTH: I hope they do. I



1 sincerely hope they do, Your Honor.

2 THE COURT: -- anticipate. If  
3 they don't, then by all means, I will promptly  
4 review any requests for reporting.

5 I assume that all reporting that goes  
6 to the United States Trustee is either  
7 docketed or shared with the creditors  
8 committee.

9 MR. BRAKKE: Yes, Your Honor.

10 THE COURT: All right. So if  
11 there is additional information that you need  
12 that you cannot achieve by general requests,  
13 then by all means, I would expect to see a  
14 2004 motion.

15 MR. KURTH: Thank you, Your  
16 Honor.

17 THE COURT: All right. What  
18 else in the cash collateral proposed order and  
19 the subsequent conversation that you've heard  
20 between Wells Fargo and the debtor to tweak it  
21 raises concerns on behalf of the creditors  
22 committee, Ms. Kurth?

23 MR. KURTH: I believe really  
24 our comments reflect the comments that you  
25 made on the bench earlier with regard to



1 redundant. We had the same concerns.

2 THE COURT: Okay. All right.  
3 Are there any other objections by any other  
4 party to the entry of a final order on use of  
5 cash collateral substantially in the form  
6 proposed and filed as a notice at docket 158  
7 with some tweaks as to the sum of money that  
8 will be held in escrow and perhaps a tweak to  
9 language to ensure that Wells Fargo's entitled  
10 to retain its liens until the claim period  
11 expires? Anybody else object to that?

12 MR. FOX: Your Honor, a comment  
13 that may or may not be an objection, and I --  
14 once again, I represent Anfield which is an  
15 unsecured creditor which provided goods  
16 prepetition. It has sent a letter to the  
17 debtor as well as filed a notice of perfection  
18 with the court and so it may have a  
19 reclamation claim.

20 Reclamation claims relate back in time  
21 to the date of filing, as I understand the  
22 law. And it may be that my client, Anfield  
23 Apparel, has a secured claim. I'm not at this  
24 point asking for adequate protection because  
25 I'm not sure of the amount, if any, that my



1 client may have in terms of a reclamation  
2 claim, and I'm not sure if other creditors  
3 have filed notices of perfection or have given  
4 alternative notice of a reclamation claim to  
5 the debtor or to the debtor's counsel, but I  
6 would suggest that perhaps the order should  
7 include a provision essentially stating that  
8 certain parties have or may have asserted  
9 reclamation claims and that all rights of such  
10 parties to assert reclamation, to assert a  
11 lien based on reclamation rights, to demand  
12 segregation of goods, to demand an accounting,  
13 perhaps demand segregation of monies that are  
14 proceeds of reclaimed goods that were perhaps  
15 improperly or hastily sold are preserved.

16 So I'm not asking that any new rights  
17 be created but that such an order preserve any  
18 rights which may exist. And Your Honor's  
19 response to me, maybe this is a cash  
20 collateral order.

21 THE COURT: Yes.

22 MR. FOX: And perhaps it  
23 doesn't fit. And it may not fit. But I think  
24 that I should at least say something now  
25 because I'm going to have a similar objection



1 down the road of some of the other matters,  
2 and so I at least want to state my objection  
3 on the record. And it may be an inappropriate  
4 place, this language in the cash collateral  
5 order, or it may not. I simply raise the  
6 issue.

7 THE COURT: Okay. Would you  
8 agree with me that a hypothetical reclamation  
9 claim would not have priority over, say, Wells  
10 Fargo as to cash collateral?

11 MR. FOX: I would agree  
12 100 percent, and that's why my client makes no  
13 comment about the order insofar as it concerns  
14 Wells Fargo. My client does not have an issue  
15 there. Wells Fargo is in first place.

16 THE COURT: So you're saying  
17 that because you might have a reclamation  
18 claim against cash at some point, that it  
19 should be included in the cash collateral  
20 order?

21 MR. FOX: That the fact that  
22 such claims not only by my client but other  
23 vendors may exist, whatever those rights are,  
24 they're preserved despite, you know, any other  
25 language in the order.



1 THE COURT: Well, it sounds  
2 like a -- I'm not seeing it in this order.  
3 It's perhaps appropriate in another context,  
4 claim of some sort, but it sounds a lot to me  
5 like a comfort order, and one that is possibly  
6 unnecessary. So I -- that gives me pause.

7 MR. FOX: I understand, Your  
8 Honor.

9 THE COURT: But if the debtors  
10 would like to include such language.

11 MR. FOX: Your Honor, I  
12 understand why the debtors would not wish to  
13 include such language. I acknowledge that  
14 there is a comfort, a macaroni and cheese  
15 feel, to what I said.

16 THE COURT: Right. Uh-huh.

17 MR. FOX: Although, at age 59,  
18 macaroni and cheese is a less --

19 THE COURT: Less comforting.

20 MR. FOX: Less of a comfort  
21 food for me.

22 It's a reservation of rights provision.  
23 Maybe that's what takes it out of the comfort,  
24 the macaroni and cheese zone and just says to  
25 the extent that these rights exist, no one is



1 intending to trample over these rights.

2 THE COURT: If there were  
3 language in the proposed order that suggests  
4 that I was trampling on those rights, I would  
5 adjust that language.

6 Can you point me to any sentence or  
7 paragraph that would suggest that those rights  
8 are being affected?

9 MR. FOX: Your Honor, I was on  
10 an airplane all day yesterday coming up here  
11 and I saw the orders. I had note in my office  
12 to download and to email me the orders. I  
13 haven't seen the orders, at least the ones  
14 that were downloaded yesterday. So no, I  
15 cannot.

16 THE COURT: Okay. Well, I  
17 don't remember one. I will keep your  
18 objection in mind as I carefully review the  
19 proposal that the debtors have provided. If I  
20 run across language that might suggest that  
21 reclamation claims or interests are being  
22 affected by the language, I will most  
23 certainly keep your objection in mind.

24 MR. FOX: Thank you, Your  
25 Honor.



1 THE COURT: But I don't plan on  
2 adding any language if there isn't any  
3 suggestion that the order might affect them.

4 MR. FOX: Thank you, Your  
5 Honor.

6 THE COURT: Okay. Any other  
7 questions, concerns, or suggestions? All  
8 right.

9 Then the Court will grant the motion  
10 for use of cash collateral and enter an order  
11 substantially in the form that was proposed by  
12 debtors and filed as a notice with some of the  
13 suggestions -- suggested changes that I noted  
14 on the record, keeping in mind the rights of  
15 reclamation claims. Okay.

16 So then the next issue I will bring is  
17 the requested final order authorizing the  
18 debtor to assume the consulting agreement,  
19 authorizing and approving the conduct of the  
20 store closing sales, and to ensure that such  
21 sales are free and clear of all liens. Okay.

22 So I think I will begin with Ms. Kurth  
23 first. But before I ask her to speak about  
24 the objection, I would like to ask Mr. Brakke  
25 one question.



1 In the context of the first stay  
2 motions, several of the other motions were  
3 affected by the order granting interim use of  
4 cash collateral. The cash collateral order  
5 was based in part on a budget. And if you'll  
6 remember, Mr. Brakke, I referred the parties  
7 back to the budget a number of times,  
8 particularly where it appeared as though the  
9 limits of spending exceeded the budget in the  
10 context of other orders.

11 One of the concerns raised by the  
12 creditors committee is that there's no budget  
13 for liquidation. Was the budget proposed for  
14 use of cash collateral proposed as a  
15 liquidation budget? I mean, is this the  
16 budget that you were considering when, in the  
17 declaration, Ms. Machenbacher testified that  
18 they were exceeding expectations for income,  
19 dramatically I might add, but that they were  
20 spending less than the budgeted sums?

21 And my question to you is, when you  
22 refer to the budget, is it document 23, the  
23 cash collateral budget that you were referring  
24 to?

25 MR. BRAKKE: Yes, Your Honor.



1 THE COURT: Okay.

2 MR. BRAKKE: And, your Honor, I

3 do believe the unsecured creditors committee

4 has withdrawn its objection to that motion.

5 MR. KURTH: That is correct.

6 THE COURT: Oh. Withdrawn the

7 objection to the consulting agreement?

8 MR. KURTH: Yes, ma'am. Yes.

9 We had projected -- right after we filed it  
10 the debtor reached out and we were able to set  
11 a very quick call yesterday about 1:00 with  
12 the CFO and our financial advisor. It was a  
13 short call, about 30 minutes, but extremely  
14 helpful. And they did explain to us how  
15 Tiger's effort interfaced with the budget.

16 We had concerns particularly about the  
17 20 stores being liquidated in April and the  
18 associated budget expense, and the CFO walked  
19 us through that. There were a lot of accrual  
20 items in that April budget that were incurred  
21 in May. So we were especially concerned. We  
22 didn't want to see, you know, millions of  
23 dollars spent to liquidate 20 stores. But  
24 once we had the detail and a better  
25 explanation of the line items and how the



1       accruals worked, concluded that, yes, this  
2       makes a lot of sense and we went ahead and  
3       withdrew our objection yesterday afternoon.

4               THE COURT: My mistake. All  
5       right. I did not see it this morning. Okay.

6               MR. KURTH: Could possibly have  
7       been after hours. I'm not sure but --

8               THE COURT: Well, I was  
9       reviewing the docket at 8:00 and 9:00 last  
10      night just to make sure I didn't miss  
11      anything, so it was entirely my mistake. So  
12      okay. All right. Well, delighted to hear it.

13              Are there any other -- so you don't  
14      have any objections? Not just to the budget  
15      concerns --

16              MR. KURTH: No. We have no  
17      objections. We're very comfortable with Tiger  
18      proceeding as they have proposed.

19              THE COURT: All right. Are  
20      there any other objections, suggestions,  
21      questions relating to the entry of a final  
22      order authorizing the debtor to assume  
23      consulting agreement and authorizing and  
24      approving the store closing sales?

25              MR. FOX: Yes, Your Honor.



1 Steven Fox for Anfield. I will keep my  
2 comments very brief because they will be  
3 similar to my comments relating to cash  
4 collateral.

5 I just wanted to point out, at least  
6 from the motion, it does not appear to be any  
7 provision to segregating goods that have been  
8 made subject of a reclamation claim. There's  
9 no provision to account for such goods. No  
10 provision to segregate funds from any -- based  
11 upon any such reclamation claim.

12 And with respect to the free and clear  
13 nature of the sale under 363(f), there should  
14 be some protection for reclamation claims,  
15 hypothetical, de minimus, small, or large  
16 preserving their rights.

17 Other than that, my client has no  
18 objection and thinks that the motion is well  
19 taken. There should be -- the sale should go  
20 forward just with a preservation of rights.

21 THE COURT: Okay. Explain to  
22 me exactly your client's interest in  
23 disposition of the goods.

24 MR. FOX: Sure. Your Honor, to  
25 the extent any part of my client's claim is



1 based upon reclamation, my client has made a  
2 claim by letter and by filing with the court a  
3 notice of perfection. The impact of those two  
4 items is that my client asserts a lien on  
5 goods.

6 The debtor has an obligation to  
7 segregate such goods, although typically  
8 debtors don't. They do have some obligation  
9 to segregate into account. And as a result,  
10 the debtor has an obligation when it's doing a  
11 going-out-of-business sale to, at a minimum,  
12 account for those goods and if they have been  
13 sold, to segregate the monies. If they  
14 haven't been sold, to segregate the goods or  
15 to at least reach an agreement with the  
16 reclaiming creditor as to what can be done.  
17 For example, sale of those goods and on what  
18 conditions.

19 Your Honor, again, this is a  
20 preservation of rights request.

21 THE COURT: So your clients do  
22 not yet have a reclamation claim or they have  
23 some claims that have been addressed or  
24 haven't been addressed or they just might have  
25 claims?



1 MR. FOX: My clients provided  
2 goods in the 45-day period prepetition.

3 THE COURT: Uh-huh.

4 MR. FOX: And filed a notice of  
5 perfection. I'm planning to have a  
6 conversation with debtor's counsel after the  
7 hearing, which is one of the reasons I came up  
8 today, face-to-face meetings are always  
9 better.

10 THE COURT: Uh-huh.

11 MR. FOX: So I can put into  
12 place with the debtor a mechanism to figure  
13 out what products may have been present on the  
14 date of the petition filing and also the date  
15 that the demands for reclamation were made.

16 But until then, it's not clear to me  
17 that my client has a reclamation claim or does  
18 not. I suspect it does but I can't say that  
19 with certainty one way or the other.

20 THE COURT: Okay. So,  
21 Mr. Brakke, it was apparent to me after  
22 reading some of the pleadings in this case  
23 that some of the goods that were added to the  
24 Vanity sales were tagged with special price  
25 tags that would allow those parties providing



1 inventory to understand and be able to  
2 separately segregate what funds should go to  
3 the management company, the consulting company  
4 that was adding goods, additional goods to the  
5 sales.

6 So I know that there's a way to  
7 separately segregate but it's not clear to me  
8 that Vanity would have -- or my question to  
9 you is, does Vanity even have the capacity to  
10 separately segregate goods from suppliers who  
11 have asserted a lien against goods or made  
12 such a claim because they provided goods  
13 within 45 days of the petition?

14 MR. BRAKKE: The short answer  
15 is no, Your Honor. If I may expand on that?

16 THE COURT: Please.

17 MR. BRAKKE: To the extent the  
18 goods are, so to speak, in the warehouse, Your  
19 Honor, and essentially are still in the  
20 original shipping cartons, it is possible to  
21 identify goods subject to a reclamation claim.

22 We believe, Your Honor, that with one  
23 exception, which is a shipment of sunglasses  
24 with a value of approximately \$3,000, all of  
25 the other goods on which we've received



1       reclamation claims have been shipped out of  
2       the warehouse long before the case was started  
3       and are, in all probability, were sold before  
4       the case was started. It is simply impossible  
5       to trace.

6               And with respect to a reclamation  
7       claim, Your Honor, it's my understanding from  
8       the case law that the courts have held that,  
9       number one, the Bankruptcy Code does not  
10      create a reclamation claim independent of the  
11      Uniform Commercial Code. And that where  
12      you're dealing with Uniform Commercial Codes,  
13      this is not a security interest and there is  
14      no claim to proceeds.

15             The only claim to proceeds, and it  
16      really isn't even analogous, is the right of a  
17      reclamation claimant to have administered a  
18      claim, which is provided for in the Bankruptcy  
19      Code.

20             But again, that's not to proceeds, Your  
21      Honor. It simply gives a particular priority  
22      as to distribution.

23             And when we speak of perfection of a  
24      reclamation claim, Your Honor, I believe the  
25      case law is also very clear that simply filing



1 a notice of reclamation claim does not perfect  
2 the reclamation claim. And there are a  
3 variety of additional steps the reclamation  
4 claimant must take to have a reclamation claim  
5 determined. None of the reclamation claimants  
6 have done what is required in this situation.

7 THE COURT: To secure an  
8 administrative claim?

9 MR. BRAKKE: Again, Your Honor,  
10 that is a separate matter and that depends on  
11 simply the timing of the shipment of goods and  
12 they will be able to file an administrative  
13 claim. What I'm talking about, and I'm sorry  
14 if I didn't make myself clear, is the actual  
15 reclamation claim as to the specific goods.

16 THE COURT: Okay.

17 MR. BRAKKE: The administrative  
18 claim and the reclamation claim are entirely  
19 separate. They deal with the same concept.  
20 But again, one is priority in distribution.  
21 The other one is saying you get your goods  
22 back. That is the reclamation claim.

23 And if I may, Your Honor.

24 THE COURT: Yeah, please.

25 MR. BRAKKE: The free and clear



1 language in the draft order simply ensures  
2 that customers receive goods they are  
3 purchasing free and clear. I don't think  
4 there's any language in the store closing  
5 order, Your Honor, that tramples on the rights  
6 of reclamation claimants to the extent they  
7 have rights. They simply need to take the  
8 steps that are outlined in the case law to  
9 pursue those claims. And at present all we  
10 have are potential reclamation claims that the  
11 Court has not been provided with any facts to  
12 analyze.

13 THE COURT: What does the  
14 debtor plan to do -- what is the plan with  
15 regard to disposition of the final inventory  
16 that's not sold, if any?

17 MR. BRAKKE: There are various  
18 sources of, Your Honor, that are essentially  
19 bulk purchasers of non-saleable inventory.  
20 And my understanding, Your Honor, that's the  
21 course of action the debtor would pursue when  
22 we're at the very end of the liquidation  
23 process.

24 THE COURT: So actually  
25 returning merchandise, once it's been shipped



1 from the crates at the original point of  
2 reception of the goods that were received,  
3 once it was shipped out to various stores,  
4 there's virtually no way to return the goods  
5 to the suppliers that provided them?

6 MR. BRAKKE: There's no way to  
7 return them and there's also really no way to  
8 trace them to a particular shipment that might  
9 be subject of a reclamation claim.

10 THE COURT: Okay. So the  
11 remedy would be --

12 MR. BRAKKE: An administrative  
13 expense claim, which I would think would have  
14 far more value than inventory with Vanity  
15 labels that the manufacturers really can't  
16 make any use of if they recover it.

17 But, again, that's not in the record,  
18 Your Honor. Just a comment.

19 THE COURT: So, Mr. Fox, the  
20 language of the consulting agreement, I know  
21 you only got a chance to look at it on your  
22 cell phone, but is there some language in this  
23 proposed order that was filed as 162 on the  
24 docket that suggests that it would affect any  
25 of your client's rights to file a claim and



1 seek administrative priority or to file a  
2 claim and pursue it?

3 MR. FOX: Your Honor, again, I  
4 have not seen the order because it was  
5 uploaded -- the notice was filed when I was  
6 traveling.

7 At this point I just raise this and  
8 I'll leave it to the Court to do what the  
9 Court deems appropriate.

10 THE COURT: Okay. My plan  
11 would be to carefully review the language as I  
12 did the cash collateral order, and if there's  
13 any language suggesting that it may affect the  
14 rights of reclamation claimants, that I would  
15 adjust the language or include language  
16 preserving your rights. But barring that, my  
17 plan would be to enter an order substantially  
18 in the form proposed essentially authorizing  
19 the debtor to assume -- the final order  
20 authorizing the debtor to assume consulting  
21 agreement and authorizing the store closing  
22 sales.

23 MR. FOX: I understand, Your  
24 Honor.

25 THE COURT: Okay. Before I



1 move on, was there any other questions,  
2 concerns, suggestions?

3 Okay. Then it will be my plan to enter  
4 an order granting the motion. All right.

5 Next we have request for a final order  
6 authorizing the debtor to pay and honor  
7 certain prepetition wages, benefits, and other  
8 compensation obligations, to honor a  
9 management services agreement and pay related  
10 prepetition obligations, and to authorize  
11 banks to honor checks. All right.

12 The last time I reviewed the case it  
13 appeared as though the creditors committee had  
14 an objection. Is that objection still --

15 MR. KURTH: Yes. We do still  
16 have -- we have more answers than we did  
17 yesterday, but we still have an objection and  
18 some concerns.

19 THE COURT: Okay. Then I think  
20 I will let you lead the discussion and allow  
21 you to tell me, Ms. Kurth, what the creditors  
22 committee is still objecting to and what it is  
23 not objecting to.

24 MR. KURTH: Okay. Thank you,  
25 Your Honor.



1 First, to be very clear, we have no  
2 objection to the payment of the prepetition  
3 wages and benefits to the employees of the  
4 debtor, which was already approved on an  
5 interim basis, and we have no issue with that  
6 being approved on a final basis.

7 Our concerns with respect to the motion  
8 really have to do with this contract that they  
9 have with Vanity, Inc., which has common  
10 ownership with the debtor. And my experience  
11 sometimes is those relationships are fine, but  
12 they also open a door for a lot of mischief.  
13 So we're very concerned in getting that, you  
14 know, a level of due diligence in our  
15 discussions with the debtor.

16 There are some aspects of it that we do  
17 understand. The headquarters employees and  
18 staffing is being provided by virtue of this  
19 agreement with Vanity, Inc. So we understand  
20 that those employees need to be supported and  
21 deserve a fair wage.

22 At the same time, our concern is there  
23 is \$1.2 million, as we now understand it, of  
24 the \$7 million operating budget reflects  
25 payments under this Vanity, Inc. contract,



1 which is about 15 percent of the case  
2 administration going forward. So it's not a  
3 small number at issue.

4 This includes passthrough payments for  
5 employees. It also includes rent, utilities,  
6 bank charges, credit card payments. We  
7 understand that it does not include a  
8 profit -- don't want to say profit share --  
9 but basically a bonus component that was  
10 figured by profits because there were no  
11 profits. But it does include this other  
12 passthrough cost. And one of them with  
13 respect to rent, when we inquired yesterday,  
14 we learned that the property that they're  
15 operating is owned by -- the owners are at  
16 least an entity with a substantially similar  
17 ownership to Vanity, Inc. So these are all  
18 insiders and insider affiliates.

19 We have a representation -- I mean, and  
20 this was a five-minute phone conversation.  
21 But we do have a representation that the CFO  
22 believes it's (inaudible). We haven't been  
23 able to verify that.

24 So we do continue to have some  
25 questions with respect to how this contract



works. Some of the things that we want to be sure of is we want to be able to explore any possible fraudulent transfer inquiries that we might have if this -- if these arrangements are not at market, if they include costs that are not passthrough costs for market wages for basically staff-level employees that rent and other components that might be benefiting insiders. We feel that we need an ability to scrutinize that.

So we certainly want to be, clear even with respect to the 315 that was already approved on an interim basis that money has been paid, if some of those payments would otherwise be a fraudulent transfer, we'd want to preserve our rights.

And I would ask, if Your Honor is amenable, that we continue this aspect of the motion perhaps another week so that we can do a little more due diligence with respect to some of the nonemployee payments in particular, ensure that that rent is verifiably market rent. For example, an unnecessary payment needs to be made so we have a full understanding of the insider



1 transactions here. And in a week we may have  
2 some sufficient answers and, as with Tiger,  
3 feel fully comfortable or we may be able to  
4 come to you and say, hey, we don't think this  
5 is market or we have this specific concern.

6 But we did start the discussion  
7 yesterday which was productive but we were  
8 focused on Tiger, so it was -- it was a  
9 five-minute conversation.

10 THE COURT: Mr. Brakke, does  
11 the debtor have any objection to continuing?

12 MR. BRAKKE: We do, Your Honor.  
13 The issue is that Vanity, Inc. is essentially  
14 the brain while Vanity Shops are the legs and  
15 arms. Vanity, Inc. provides essentially the  
16 entire management structure of the debtor,  
17 anything above regional managers, so its  
18 functioning is critical. The employees of  
19 Vanity, Inc., all know that their jobs are  
20 limited duration. They will probably be out  
21 of jobs by the end of next month.

22 To delay, Your Honor, to make it  
23 uncertain as to whether they will continue to  
24 receive paychecks would simply be disastrous  
25 to our ability to retain those employees. And



1 we are able to provide testimony on that issue  
2 today, Your Honor, if there is any doubt of  
3 what I'm saying.

4 If the only issue, Your Honor, is  
5 whether any conveyances made pursuant to this  
6 motion might be fraudulent transfers, there is  
7 nothing in the draft order, Your Honor, that  
8 would alter the committee's rights to pursue  
9 such simply baseless claims, Your Honor, and  
10 increase administrative expenses in this case.

11 So the committee's sole concern, Your  
12 Honor, is not impaired by this draft order.  
13 But to continue the matter, Your Honor, would  
14 simply impair the ability of Vanity to  
15 continue. As the court's indicated, we are  
16 producing revenues far above expectations,  
17 even the expectations of the expert  
18 liquidation consultant, Tiger. And we are  
19 keeping expenses below budget.

20 The quickest way to destroy that  
21 admirable track record is to create risk in  
22 the minds of the employees of Vanity, Inc.,  
23 and that's exactly what this suggestion does.

24 THE COURT: So, Ms. Kurth, it  
25 seems to me that there were -- some of the



1 expenses that were paid that gave you pause,  
2 that gave creditors committee pause, and that  
3 there are some expenses that do not. And as  
4 it pertains to the payment of the  
5 administrative employees, it didn't appear to  
6 me, or maybe you will have to rearticulate for  
7 my benefit, but it didn't appear to me that  
8 you really had any concerns about the type of  
9 work that was performed by Vanity, Inc., but  
10 rather, that it was paying expenses through  
11 rent to people who were likely insiders. And  
12 you haven't had a chance yet to find out  
13 whether those payments were, you know, market.

14 MR. KURTH: That is generally  
15 correct. We don't have -- we don't have  
16 complete answers as to who is being paid under  
17 the agreement. There was a representation in  
18 the motion that nothing would be paid in  
19 excess of a priority cap. And I'm trying to  
20 recall if there was a representation that  
21 insiders would be paid or not paid. But we're  
22 not clear if there are insiders, that there  
23 are owners who are receiving payments in any  
24 kind under this agreement.

25 So I would say payments to insiders who



1 might also be providing services might be  
2 fine, but we don't have a visibility here that  
3 would allow us to understand what they're  
4 being paid. And it's really the non-wage  
5 items. We have no concerns with, you know,  
6 payroll and salary going out to the rank and  
7 file employees who are providing those  
8 day-to-day services.

9 THE COURT: I don't remember  
10 from the motion, were insiders paid or  
11 specifically excluded in either the motion or  
12 the --

13 MR. BRAKKE: Well, to the  
14 extent we have insiders in the category of  
15 (inaudible), Your Honor, such as  
16 Ms. Machenbacher, yes. Officers are being  
17 paid. And, of course, Ms. Machenbacher is the  
18 chief financial officer. And if we're talking  
19 about the brain of the operation, that is the  
20 top of the brain.

21 THE COURT: So she's being paid  
22 a salary?

23 MR. BRAKKE: Right.

24 THE COURT: But not bonuses or  
25 incentives that were specifically excluded?



1 MR. BRAKKE: Correct.

2 MR. KURTH: And I believe, if  
3 we're correct, she's not an owner. She's an  
4 officer.

5 MR. BRAKKE: Correct. But  
6 she's still an insider.

7 MR. KURTH: Correct.

8 MR. BRAKKE: Under the code  
9 definition.

10 MR. KURTH: Our concern is not  
11 with Ms. Machenbacher. Our concern is with  
12 any owners.

13 THE COURT: Are shareholders  
14 being paid?

15 MR. BRAKKE: No.

16 THE COURT: Okay. Would debtor  
17 have an objection to me including a paragraph  
18 that says shareholders shall not be paid under  
19 this order?

20 MR. BRAKKE: No.

21 THE COURT: Shareholders of  
22 Vanity Shop of Grand Forks, Inc., and any  
23 related entity.

24 MR. BRAKKE: Yes. That would  
25 be acceptable, Your Honor. And, Your Honor,



1 we're talking about wages and salary.

2 THE COURT: Yeah. I'm just  
3 saying shall not be paid under this order,  
4 which is limited to wages, benefits, and other  
5 compensation obligations.

6 MR. BRAKKE: Although, assuming  
7 the management contract also involves  
8 compensating Vanity, Inc. for rental of the  
9 premises that house the Vanity, Inc. employees  
10 that are providing all these services to  
11 Vanity Shop, the debtor, Your Honor, that, I  
12 think, was the real concern of the unsecured  
13 creditors committee as to whether that rent  
14 was at market rates, Your Honor.

15 THE COURT: Is that the only  
16 expense we're talking about here?

17 MR. BRAKKE: It's  
18 administrative overhead, Your Honor. Again,  
19 rent, utilities, all those things. There is  
20 no profit being assessed. We can provide  
21 testimony today, Your Honor, as to the fact  
22 there's no profit, the fact that all these  
23 other expenses are at market rates.

24 But again, if the sole concern is a  
25 fraudulent conveyance, there is nothing in



1 this proposed order that would preclude the  
2 right of the unsecured creditors committee to  
3 make such an assertion at a later date.

4 THE COURT: Ms. Kurth, can you  
5 think of anything other than rent that gives  
6 you pause? Rent to the shareholders?

7 MR. KURTH: Right. My  
8 understanding is the rent, utilities, bank  
9 charge -- bank charges, credit cards and there  
10 may be other items. It was not -- it was not  
11 a complete list. Those were some examples  
12 that the CFO provided us yesterday. So if  
13 there are other items, we haven't had time and  
14 gotten a full answer from the CFO. There  
15 could be other items being charged through as  
16 expenses. But that would be our concern are  
17 passthrough expenses.

18 MR. BRAKKE: If I may, Your  
19 Honor.

20 THE COURT: Yes.

21 MR. BRAKKE: I can't understand  
22 the concern about utilities. The utility  
23 company is not an insider. Utilities are  
24 being billed at actual. There is no markup.  
25 There is no possibility of abuse. There is no



1 possibility of a fraudulent conveyance.

2 Credit cards are for travel expenses for these  
3 employees that everybody acknowledges are  
4 necessary to the functioning of the debtor.

5 If rent is the issue, let's be clear  
6 that rent is the issue. And we can either  
7 have an evidentiary hearing today or if we  
8 need to delay it by a week, we can delay it by  
9 a week. But these other expenses are rather  
10 fundamental, Your Honor, are owed to third  
11 parties.

12 THE COURT: Well, Ms. Kurth did  
13 not have the benefit of attending the first  
14 hearing where I heard from Ms. Machenbacher  
15 about this management agreement because it  
16 gave me pause as well.

17 So my question -- my decision here,  
18 what I'm debating is whether to grant partial  
19 relief today and hold over the issue of  
20 expenses paid to shareholders arising from  
21 rent of the facility and credit cards, if  
22 that's what it is, to allow the parties an  
23 opportunity to exchange information or whether  
24 to have that information produced right now,  
25 recognizing that counsel really hasn't had an



1 opportunity to review it.

2 So I could easily schedule something  
3 for a week from now, but I don't anticipate  
4 that you will be here, Ms. Kurth, will you?

5 MR. KURTH: I can be available  
6 by phone. I don't anticipate coming.

7 If I may, Your Honor, our CFO -- or  
8 financial advisor, Chris Thomas, with  
9 Alliance, he's up here in Minnesota, and he  
10 had a very good conversation, about a  
11 half-hour conversation with the CFO yesterday.  
12 And the focus was Tiger because that was the  
13 most pressing priority, and we have limited  
14 time. But she was very helpful in answering  
15 questions and concerns. And I do believe, I'm  
16 optimistic that if we had a week continuance  
17 and they could have a similar call to really  
18 focus on this agreement, hopefully that will  
19 address our concerns or at least we can narrow  
20 them and identify precisely if there is  
21 something that remains a concern.

22 THE COURT: All right. It's  
23 only because the creditors committee's counsel  
24 has just arrived that I'm going to agree to  
25 this.



1 I am going to enter an order granting  
2 all the relief that has been requested except  
3 for any payments made to insiders or  
4 shareholders -- not insiders -- to  
5 shareholders arising from anything from  
6 expenses reimbursed to rent. Any other rent?  
7 What else should be accepted? Ms. Kurth?  
8 Credit card payments to insiders?

9 MR. KURTH: I think payments to  
10 insiders whether it -- you know, I don't know  
11 if any of them are providing management or  
12 employee services are receiving compensation.  
13 We're not clear. We have a representation  
14 that they're not. But we'd like to have a  
15 more robust answer to see if they have rent  
16 expenses as the primary thrust.

17 THE COURT: Okay. So it's  
18 basically any payments at all to shareholders  
19 arising from expenses or rent or any  
20 similar --

21 MR. KURTH: Right. To  
22 shareholders or affiliates. You know, we know  
23 about the property. I don't know if there are  
24 other affiliated entities that are receiving  
25 other payments, you know, the credit cards. I



1 don't know if that's to an affiliate, for  
2 example. We need to ask.

3 THE COURT: Okay.

4 MR. BRAKKE: Your Honor, one  
5 point of qualification. Of course, there have  
6 already been payments made pursuant to the  
7 interim order.

8 THE COURT: Right.

9 MR. BRAKKE: Presume those will  
10 not be subject to challenge and this would be  
11 an order simply going forward?

12 THE COURT: It would be an  
13 order going forward except to the extent that  
14 naturally the creditors committee could pursue  
15 a fraudulent transfer claim for those payments  
16 that were made if there were sufficient  
17 evidence to do so.

18 MR. BRAKKE: Understood.

19 THE COURT: Okay. Yes, the  
20 answer to that question is going forward.

21 Are there any other objections,  
22 questions, concerns at all relating to an  
23 entry of final order authorizing the debtor to  
24 pay and honor certain prepetition wages,  
25 benefits, and compensation obligations and



1 honor a management services agreement other  
2 than those that I have heard from the  
3 creditors committee and plan to separately  
4 qualify?

5 MR. FOX: Your Honor is looking  
6 at me, so I'll simply answer -- I'll simply  
7 mention that the CFO is more than the brain.  
8 The CFO is the most important person. Perhaps  
9 her salary can be doubled and she could have  
10 all the macaroni and cheese she would like. I  
11 mean that in jest. CFOs are very important.

12 THE COURT: Are you suggesting  
13 that she has to be included in the group that  
14 may not be reimbursed within this next week?

15 MR. FOX: Not at all. She  
16 should be reimbursed.

17 THE COURT: Okay.

18 MR. FOX: I was speaking in  
19 jest. But the CFO is so important. So  
20 important.

21 THE COURT: Okay. I do enjoy a  
22 sense of humor but I'm also trying to figure  
23 out my order. So thank you. Okay. All  
24 right.

25 So not hearing any other objections to



1 the granting of the final order, I will enter  
2 a final order essentially granting all the  
3 relief requested except for payments to  
4 shareholders, Vanity -- shareholders or  
5 affiliates of the debtor may not be paid for  
6 any reason, including expenses, bank charges,  
7 reimbursement of expenses during this interim  
8 period.

9 And I will schedule a telephone hearing  
10 for a week from today I hope. That would be  
11 the 30th. Okay. Maybe -- can you do Friday?  
12 Okay. The 30th of March is already a very  
13 full day on my calendar, so I'll schedule a  
14 telephone hearing for the morning of the 31st.

15 Ms. Kurth, the way it works in this  
16 court is if you anticipate that you will be  
17 asserting an objection, I will hear evidence  
18 on that date. So you will have to appear or  
19 have someone appear on your behalf either in  
20 person or by video conference.

21 And the video conferencing is not  
22 difficult to arrange. We are very willing to  
23 accommodate lots of different forms of  
24 technology. You just have to make plans to do  
25 so in advance.



1 MR. KURTH: I prefer nice  
2 things about the video conferencing here, Your  
3 Honor. Thank you.

4 THE COURT: And I'm happy to  
5 accommodate it to save the parties expenses.

6 MR. KURTH: And do you want to  
7 treat this as a hold date? In other words, if  
8 we're able to resolve our concerns before then  
9 and submit a stipulated form of order to Your  
10 Honor and --

11 THE COURT: That would be  
12 wonderful.

13 MR. KURTH: Okay.

14 THE COURT: Yep. That would be  
15 better. And then as soon as it's resolved, I  
16 will enter a final order. I could essentially  
17 revise the order that will be filed today or  
18 enter a new one, whatever you think would be  
19 clearer to those people who have to read this  
20 very lengthy docket.

21 MR. KURTH: I think you want  
22 this order entered today.

23 THE COURT: I'm going to enter  
24 everything except for -- I mean, I'll just  
25 qualify the order is the way it will work.



1 MR. KURTH: Thank you, Your  
2 Honor.

3 THE COURT: So then the  
4 question will be whether I amend the order to  
5 be completely unqualified using the language  
6 that was proposed or whether I enter a  
7 separate order granting additional relief.

8 MR. KURTH: Okay.

9 THE COURT: So I'll schedule it  
10 for probably 9 a.m. on March 31 and any  
11 pleading that's filed before then will result  
12 in cancellation. All right. So that resolves  
13 the wage and benefits and other compensation.

14 All right. Let's move next to cash  
15 management system. Are there any parties  
16 objecting to an order on the final basis  
17 authorizing continued use of cash management  
18 systems, authorizing use of prepetition bank  
19 accounts, account control agreements, and  
20 certain payment methods?

21 MR. FOX: Your Honor, I will  
22 just insert my continuing comments about  
23 reclamation and leave it with that.

24 THE COURT: How would that fit  
25 into this? How would your concerns about



1 asserting the reclamation claim fit within  
2 this order?

3 MR. FOX: To the extent that  
4 any goods that have been -- that should have  
5 been set aside is subject to reclamation have  
6 not or were not and such proceeds from those  
7 reclaimed goods are -- I'm sorry, Your Honor.  
8 This is the cash management motion?

9 THE COURT: Yes.

10 MR. FOX: Forget it. I'm  
11 sorry. I'm confused. Wrong motion.

12 THE COURT: Yes. This has to  
13 do with allowing the banks to continue to --

14 MR. FOX: Right.

15 THE COURT: The debtor to use  
16 the same bank accounts it used prepetition  
17 essentially.

18 MR. FOX: Sorry, Your Honor.

19 THE COURT: With lots of  
20 extra --

21 MR. FOX: I got my motions  
22 mixed up.

23 THE COURT: Okay. So Mr. Fox,  
24 your clients have no objection to the entry of  
25 a final order authorizing continued use of



1 cash management systems, authorizing use of  
2 prepetition bank accounts, accounting control  
3 agreements, and certain payment methods and  
4 granting additional time to comply with the  
5 requirements of 345(b).

6 MR. FOX: Absolutely no  
7 objection.

8 THE COURT: Okay. Any other  
9 objections? All right.

10 Hearing none, the Court will enter an  
11 order substantially in the form that was filed  
12 as document 159 as a notice. In that notice  
13 is a proposed order which essentially tweaks  
14 the language of the interim order. And so  
15 having read through that, I think it will be  
16 entered substantially in that final form  
17 except for I'll delete on an interim basis in  
18 the original caption and minor tweaks like  
19 that.

20 All right. That motion is granted.

21 Next would be -- does any party have an  
22 order to -- or an objection to entry of a  
23 final order authorizing maintenance,  
24 administration, and continuation of certain  
25 customer programs? So this is the use of gift



1 cards and honoring of sale programs. Any  
2 objections?

3 All right. The Court will enter a  
4 final order authorizing maintenance,  
5 administration and continuation of certain  
6 customer programs in substantially the form as  
7 filed as docket 160, which was a notice, but  
8 essentially a revised order based on my  
9 interim order granting the full relief  
10 requested by the debtors. So that motion is  
11 granted.

12 All right. How about is there an  
13 objection to entry of a final order  
14 prohibiting utility companies from  
15 discontinuing, altering, or refusing service,  
16 approving adequate assurance utility deposit,  
17 and establishing procedures for resolving  
18 requests for additional assurance and granting  
19 related relief? Excellent. All right.

20 So there was a proposed final order  
21 which I will review but I expect that it will  
22 be substantially in the same form with some  
23 minor changes as the interim order granting  
24 relief, but I will compare it to the final  
25 order that was proposed.



1 And that was attached to your motion.

2 Am I right about that?

3 MS. STANLEY: I believe it was  
4 the original motion, yes.

5 THE COURT: Okay. So that  
6 would be docket 12 and I'll look at that.

7 Next I will take an order related to  
8 paying prepetition taxes and fees. So is  
9 there any objection to the entry of a final  
10 order authorizing payment of certain  
11 prepetition taxes and fees and authorizing  
12 financial institutions to honor all related  
13 checks and electronic payment requests? So  
14 this was the motion filed as docket 15.

15 MR. FOX: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. FOX: On item No. 15,  
18 granted it's important that taxes be paid,  
19 we're talking about prepetition taxes, I  
20 believe, at least in part. I believe I saw in  
21 that -- I do not have my note here. Here we  
22 go. A cap of \$775,000 to pay such taxes. I'm  
23 concerned that, again, we may have a potential  
24 reclamation problem here if the debtor is not  
25 properly accounting for and segregating goods.



1 And yes, there will be an argument over how  
2 many steps have to be taken by a creditor  
3 asserting reclamation. It's not as simple as  
4 what has been already expressed to the Court.  
5 But if that money is spent and that is money  
6 that should have been turned over to any  
7 reclamation creditor, then there is a  
8 prejudice to those creditors.

9 And so I would object to the motion on  
10 the grounds that the debtor may be paying  
11 monies or likely is paying monies that  
12 priority may exist already and not to  
13 reclamation creditors.

14 Your Honor, let me try it a different  
15 way.

16 THE COURT: Okay.

17 MR. FOX: In the normal course  
18 you send a demand out and the debtor's  
19 counsel, the debtor says, okay, we can  
20 identify the goods. Here the debtor said, at  
21 least with counsel's representation is made,  
22 it can't identify the goods. The best it can  
23 do is identify that it received the goods.

24 So this presents a terrible problem for  
25 any creditor seeking reclamation because the



1 debtor will argue that, well, we already sold  
2 the goods. But here the debtor is saying we  
3 don't know where the goods are once they've  
4 left the warehouse. In fact, everything left  
5 the warehouse apparently except for some  
6 quantity of sunglasses.

7 It seems to me that the Court has to  
8 fashion a remedy for a reclamation complaint  
9 to come that says to the debtor, well, if the  
10 creditor can meet its elements, its five or  
11 six elements for reclamation, and you don't  
12 have the goods, you've got equitably -- you've  
13 got to do something equitable which is give  
14 back the dollar value of the goods shipped.

15 And so my client, Anfield's objection  
16 to this particular motion dealing with the  
17 taxes is you can't approve the payment of  
18 prepetition taxes until you know in this  
19 liquidating context what monies are going to  
20 be left over and how the monies have to be  
21 paid out.

22 And I'm sorry, Your Honor. I took a  
23 lot of time and I shouldn't have.

24 THE COURT: No, I don't -- you  
25 can -- I have time. Don't feel bad about



1 that.

2 It seems to me that at most you have a  
3 hypothetical competing claim for priority of  
4 payment. So if representations are correct  
5 and the goods cannot be traced and so you  
6 aren't going to have a genuine opportunity to  
7 retrieve inventory that your clients may have  
8 sent, then what you have is a claim for  
9 compensation. And although I'm not familiar  
10 with the provisions, if Mr. Brakke is correct,  
11 you may seek an administrative claim and  
12 receive that type of priority in the event you  
13 can achieve all of the necessary elements.

14 MR. FOX: If Mr. Brakke wishes  
15 to so stipulate now, then maybe we have  
16 something to do. But I believe that an  
17 administrative claim under Section 503(b)(9)  
18 is for goods received in the 20 days before a  
19 bankruptcy was filed. And my information  
20 right now is that the goods were received  
21 outside the 20-day period.

22 THE COURT: Okay. Then it's  
23 possible that you have a general unsecured  
24 claim. Is that what you're saying?

25 MR. FOX: Based upon -- yes. A



1       reclamation -- I'm sorry. A reclamation claim  
2       in part that may be dashed if the debtor says,  
3       well, we can't trace -- we don't know what we  
4       have.

5               And so the Court has to fashion a  
6       remedy which would basically be in lieu of  
7       receiving the goods back, receiving the dollar  
8       value of the goods back would be the logical  
9       alternative remedy. Simply to tell a creditor  
10      with a priority right, again hypothetical  
11      priority right, well, the goods are gone, you  
12      know, your priority is gone as well is not, I  
13      don't think, the correct answer. The Court  
14      has to fashion a remedy, and the only remedy  
15      would seem to be the payment of money.

16              THE COURT: Okay. If that's  
17      the case, then you will either have, depending  
18      on when the goods were shipped and what type  
19      of remedy you qualify, an administrative claim  
20      or a general unsecured claim.

21              But because you would have an arguably  
22      competing claim with taxing authorities, how  
23      does that affect their authority and their  
24      ability or right to receive compensation?

25              MR. FOX: At the moment taxing



1 authorities, as far as I'm aware, do not have  
2 a secured claim. They may have an inchoate  
3 claim, an inchoate secured claim perhaps under  
4 their jurisdiction's laws.

5 My client, if it has a reclamation  
6 claim and any other creditor that might have a  
7 reclamation claim, has a right -- basically  
8 has a right to receive goods back. And it's  
9 akin to a secured claim. If its claim is --  
10 its claim is superior to say a taxing agency's  
11 inchoate claim or unsecured claim or priority  
12 claim simply because a reclamation creditor is  
13 entitled to the stuff. And if it can't have  
14 the stuff, it's entitled to something in an  
15 alternative form. Here money.

16 THE COURT: And so you're  
17 asking me to deny relief to taxing authorities  
18 based on the possibility that your clients  
19 might have a reclamation claim?

20 MR. FOX: Or if Your Honor is  
21 not inclined to do that, to include a comfort  
22 provision that says the rights of any  
23 reclamation creditors are not affected or  
24 impaired by any other relief in this order.

25 THE COURT: Well, they're not.



1 What this order authorizes is the debtors to  
2 pay taxing authorities. The only way you're  
3 affected is if by paying the taxing  
4 authorities it doesn't provide sufficient  
5 money for your clients to recover in their  
6 entirety. But right now you haven't even told  
7 me that there is, in fact, a claim to protect.

8 MR. FOX: Your Honor, I can  
9 tell you that my client meets, in part, the  
10 elements of Section 546 dealing with  
11 reclamation. And I can tell you there's a  
12 representation by counsel for debtor that  
13 debtor has no way to trace the goods. So that  
14 tells me that a fundamental right under the  
15 Uniform Commercial Code is being dashed to the  
16 extent it exists. So there has to be some  
17 other remedy under the UCC and under the  
18 equitable provisions of the Bankruptcy Code.  
19 I'm concerned that granting this relief would  
20 impair those rights. I believe those rights  
21 are superior to any priority claim for taxes  
22 under 507(a) whatever, but at a minimum if  
23 Your Honor could simply, in the order,  
24 acknowledge that there is a hypothetical  
25 competing claim, as Your Honor called it



1 earlier, to at least preserve rights so that  
2 down the road in the context of a complaint  
3 for reclamation, the debtor can't say  
4 you've -- you lost over the tax motion because  
5 it was granted.

6 THE COURT: Yeah, no. I can  
7 assure you that if the debtors asserted that,  
8 it would be rejected by the court because  
9 simply because you didn't get to include  
10 language in this order granting debtor's  
11 authority to pay taxing authorities does not  
12 mean that you will not prevail on any claims  
13 and causes of action -- claims or causes of  
14 action related to your reclamation claim, that  
15 that type of argument would be rejected.

16 MR. FOX: Thank you, Your  
17 Honor.

18 THE COURT: Mr. Brakke, do you  
19 have any response to the request to include  
20 that language?

21 MR. BRAKKE: If it is not  
22 possible to trace the goods, that will defeat,  
23 in and of itself, the reclamation claim. So  
24 this is not a situation where what the debtor  
25 has done defeats the claim but simply as a



1 matter of the reclamation claimant not being  
2 able to prove their prima facie case.

3 And if, in fact, there is no  
4 reclamation claim, it would be dangerous for  
5 this court to start trying to create some kind  
6 of equitable remedy that is not conceived in  
7 the case law and is certainly not conceived of  
8 by the Code as basically something to protect  
9 people with reclamation claims they can't  
10 prove. There is nothing in this order that  
11 would limit a reclamation claim if it can be  
12 properly proved.

13 The ultimate issue, Your Honor, is if  
14 there is a reclamation claim that can be  
15 proved, is there money available to pay that  
16 administrative expense. And all of the data  
17 Your Honor shows that this estate is  
18 administratively solvent. So there is simply  
19 no practical risk by this motion, let alone  
20 the absence of a legal justification for  
21 adding the proposed language.

22 THE COURT: I know this is  
23 early in the case but is there a very rough  
24 estimate of unsecured claims or administrative  
25 claims? Let's say unsecured claims. Just --



1 do you know, Ms. Kurth?

2 MR. KURTH: Yes. The estimate  
3 that we had was 5.7 million which includes  
4 employee-related liabilities and past due rent  
5 but does not include, I believe, rejection  
6 damages that was the estimated general  
7 unsecured claims in the first stay motions.  
8 TGC, LLP, assuming that that is (inaudible)  
9 with unsecured creditors, that's another  
10 \$5 million because that security interest was  
11 perfected within weeks of the petition date.  
12 So (inaudible) plus.

13 THE COURT: Estimate of  
14 administrative claims.

15 MR. KURTH: Estimated  
16 administrative claims, the best information we  
17 have is the debtor's budget which would  
18 indicate about 7.6 million operating and  
19 .9 million on a non-operating basis. And  
20 that's from the first stay pleadings, so  
21 Mr. Brakke.

22 THE COURT: Is that about  
23 right, Mr. Brakke?

24 MR. BRAKKE: The budget, Your  
25 Honor, shows --



1 THE COURT: Where did I put it?

2 Budget at docket 23, the same --

3 MR. BRAKKE: Yes. The budget,  
4 Your Honor, after the expenses of liquidation  
5 shows a net cash flow of --

6 THE COURT: 3.328?

7 MR. BRAKKE: -- 3.328. And we  
8 are doing better than the budget, as Your  
9 Honor has indicated.

10 THE COURT: So --

11 MR. BRAKKE: And so that  
12 would -- I'm sorry. Excuse me.

13 THE COURT: Would that be mean  
14 that you suspect that you're going to have  
15 money to pay unsecured creditors? Maybe not  
16 in full but --

17 MR. BRAKKE: Yes. And to  
18 perhaps provide a fuller answer to Your  
19 Honor's question, the 3.328 would be after any  
20 expenses of liquidation that might be deemed  
21 administrative expenses.

22 THE COURT: Okay.

23 MR. BRAKKE: So conceivably the  
24 only administrative expenses not covered by  
25 the budget would be reclamation claims. Based



1 on the total reclamation claims we've  
2 received, even if they were all for goods  
3 delivered within the last 20 days, reclamation  
4 claims would be 600,000? About 600,000.

5 So, again, I don't think there's any  
6 indication that this case is going to be  
7 administratively insolvent.

8 THE COURT: It appears not.  
9 Okay.

10 I am going to overrule the objection  
11 that was asserted by Mr. Fox's clients and  
12 grant the order authorizing payment of  
13 prepetition taxes and fees and authorizing  
14 financial institutions to honor all related  
15 checks and electronic payments.

16 The final order will be substantially  
17 in the same form as the interim order with  
18 adjustments to ensure that I've reviewed the  
19 proposed order at docket 15 and also revise  
20 the language to reflect a final order until --  
21 final as in effective through April 19, I  
22 think, is the date that you picked.

23 MR. BRAKKE: Yes, Your Honor.

24 THE COURT: Okay. All right.

25 MS. STANLEY: Your Honor?



1 THE COURT: Yes.

2 MS. STANLEY: Just one quick  
3 comment. We had done the interim order for  
4 650,000. And then the final order was 775.

5 THE COURT: Oh, yes. And I  
6 remember that.

7 MS. STANLEY: Yep.

8 THE COURT: Which is why I told  
9 myself I need to look at those proposed  
10 orders. But that is one of the major reasons.  
11 So 700 and --

12 MS. STANLEY: Seventy-five.

13 THE COURT: Seventy-five.  
14 Thank you. Anything else in particular I  
15 should pay very close attention to?

16 MS. STANLEY: No, Your Honor.

17 THE COURT: Thank you for  
18 reminding me.

19 The next issue I will consider is a  
20 final order. So I'm asking right now are  
21 there any objections to the entry of a final  
22 order authorizing debtor to continue  
23 prepetition insurance policies and pay-related  
24 prepetition insurance obligations and  
25 authorizing the banks to honor related checks



1 and transfers? Any objection to insurance?

2 MR. KURTH: No, Your Honor.

3 THE COURT: Okay. All right.

4 The Court will enter a final order in  
5 substantially the same form as the interim  
6 order except that I will ensure that it reads  
7 as the final order. And I will also take a  
8 look at the proposed order filed at docket 14  
9 to ensure that I haven't missed anything.

10 Do I have one left? Okay. The lease  
11 rejection. So are there any objections to the  
12 entry of a final order establishing procedures  
13 for the rejection of executory contracts and  
14 unexpired leases?

15 MR. BRANCH: Good morning, Your  
16 Honor. Dustin Branch, Ballard Spahr, LLP on  
17 behalf of the member landlord. As you recall,  
18 we went through this order a couple weeks ago  
19 and the form order is acceptable. Just a  
20 couple of points to raise on this.

21 The language in the order providing for  
22 the abandonment of property once the lease is  
23 rejected is not also in the notice and it  
24 should be in there so that parties receiving  
25 notice of the rejection will also receive



1 notice of the abandonment.

2 And just one other point I'd note that  
3 the order provides that there will be a form  
4 of order attached to the notice, and the  
5 notice doesn't reflect that.

6 THE COURT: Right. Here was my  
7 concern. I have to confess that I struggled  
8 with this for far too long on the day that I  
9 entered the order. The way that the proposed  
10 order reads it suggests that there are no  
11 objections asserted by anyone who received  
12 notice. And so it left me struggling with  
13 either trying to adjust the language of the  
14 notice or the proposed order in ways that were  
15 not logical.

16 And so I removed the proposed order and  
17 reference to the proposed order and instead  
18 thought I would just consider the order that  
19 the parties proposed at the time that a notice  
20 of rejection of executory contracts were  
21 filed.

22 So I recognize now that the debtor has  
23 filed two of them, one at docket 129 and one  
24 at docket 131. And when those orders are ripe  
25 for review, I would enter a proposed order



1 using the go bys essentially provided by the  
2 parties rather than providing notice of what  
3 an order might look like only if no party to  
4 receive notice objected.

5 Do you see where my confusion and my  
6 concern lies? So I don't intend to attach a  
7 proposed order to the notice.

8 MR. BRANCH: And, Your Honor,  
9 Dustin Branch again. I think that's fine. I  
10 don't think there's a need to attach the  
11 order. We would just like to see the  
12 abandonment language from the order that's  
13 being approved today carry over into the  
14 notice so the parties have notice of that.

15 THE COURT: I agree that that  
16 should have been included and we'll most  
17 certainly add a paragraph. So the -- from the  
18 order establishing procedures, the abandonment  
19 language is provided in what paragraph so that  
20 I can add it -- or do you want to --

21 MR. BRANCH: In paragraph 2(d).  
22 It's the last sentence of 2(d) starting with  
23 "Upon the rejection date."

24 THE COURT: Oh, yeah. I see  
25 it. Okay. All right. So I suppose that



1 paragraph can just be copied into the notice.

2 Any reason it couldn't be?

3 MR. BRAKKE: No. Do you want  
4 us to do that, Your Honor?

5 THE COURT: No. I think -- I  
6 think I could -- if you would like to tell me  
7 exactly where you would like it placed, I see  
8 no problem in saying, Please take notice  
9 that -- please also take notice that.

10 So where would it fit most logically  
11 just so everybody knows where I expect it to  
12 go?

13 MR. BRAKKE: We would suggest,  
14 Your Honor, that it should be at the top of  
15 page 3 right after the -- top of page 2, right  
16 below the unexpired nonresidential real  
17 property leases chart.

18 THE COURT: Okay.

19 MR. BRAKKE: With the  
20 fill-in-the-blanks.

21 THE COURT: So I'll include the  
22 words, "Please take further notice" in  
23 capitals and then add "Please take notice that  
24 upon rejection date any personal property,"  
25 blah, blah, blah, right?



1 MR. BRAKKE: Yes, Your Honor.

2 THE COURT: Very helpful,

3 Mr. Branch. Anything else?

4 MR. BRANCH: No, Your Honor.

5 Not from me.

6 THE COURT: Okay. Was there --  
7 did I miss some language referring to the  
8 proposed order in the interim order or the  
9 notice? You know what? I'll just do a word  
10 search.

11 MS. STANLEY: Your Honor.

12 THE COURT: Yeah.

13 MS. STANLEY: Paragraph 2(b),  
14 again right at the end before the struck out  
15 language, All rejection notices must be  
16 accompanied by a copy of the proposed order  
17 approving the rejection of the contracts.

18 THE COURT: Okay. 2(b). So  
19 I'm just going to delete that sentence unless  
20 you really think it's necessary that they see  
21 a copy of the proposed order. Okay. If I  
22 grant the relief. It's all been in the  
23 motion. It's all been in the notice. Okay.  
24 Thank you.

25 Did you see any other places,



1 Ms. Stanley?

2 MS. STANLEY: No. That was the  
3 one that tripped me up when I did the first  
4 one.

5 THE COURT: Okay. All right.  
6 I notice that the debtors had deleted the  
7 reference to with respect to all other  
8 contracts or leases. You have no other  
9 executory contracts or releases? That's why  
10 that's deleted?

11 MS. STANLEY: That sentence is  
12 in there twice.

13 THE COURT: Well, it's in there  
14 once for real property leases and then I  
15 thought this was a second -- that's why it was  
16 in there. I thought that you put that in  
17 there twice for a reason because the first  
18 one -- the first sentence refers to real  
19 property leases and then the second one I  
20 thought referred to everything else. Am I  
21 mistaken about that?

22 MS. STANLEY: That -- the  
23 sentence that's crossed out is the exact same  
24 sentence that's two above.

25 THE COURT: Except for the



1       introductory clause, so -- oh, I see. You're  
2       right. Never mind. You do have an extra  
3       sentence. Good one.

4                   MS. STANLEY: Yep.

5                   THE COURT: Okay. All right.  
6       Are there any objections? Mr. Branch, is  
7       there anything else that you had questions or  
8       concerned about? Anything else you needed to  
9       add or would like to add?

10                  MR. BRANCH: No, Your Honor.  
11       That was it.

12                  THE COURT: Okay. Any other  
13       concerns about entry of the final order? All  
14       right.

15                  Then hearing no objection, the Court  
16       will enter a final order establishing the  
17       procedures for the rejection of executory  
18       contracts and unexpired leases. And this  
19       order will be substantially in the same form  
20       as docket No. 161 which was a revision  
21       prepared by the debtors based on the Court's  
22       interim orders with the adjustments that we  
23       discussed today, both to the entry of the  
24       order as well as the notice. So those changes  
25       we discussed today will be included in the



1 final order and notice attached. So that  
2 motion is granted.

3 As long as we're visiting about leases,  
4 I notice that the notice filed at document 129  
5 does not have an objection deadline but 131  
6 does.

7 MS. STANLEY: Your Honor, one  
8 of them was a second omnibus, correct?

9 THE COURT: Yes.

10 MS. STANLEY: Did I miss the  
11 notice part of the --

12 THE COURT: 129 didn't have a  
13 notice.

14 MS. STANLEY: Because one of  
15 them was the -- what I call my second omnibus  
16 because it was rejecting leases that were  
17 never -- you know, stores that had never been  
18 opened. So those were not filed under these  
19 procedures that we've been talking about.  
20 They were just a normal -- a normal -- my  
21 second omnibus.

22 THE COURT: Okay.

23 MS. STANLEY: So it wasn't  
24 under these shortened procedures. And then I  
25 did my first notice of rejection under this



1 procedure one.

2 THE COURT: Okay. So you're --  
3 it's -- right. The first notice of the --  
4 using these procedures was the notice under --  
5 filed as document 129. It was the first one.

6 MS. STANLEY: Right. And I  
7 called it my first notice one. I probably  
8 should have said my third.

9 THE COURT: Yeah. That's --  
10 yeah. You said debtor's first notice of  
11 rejection, right.

12 MS. STANLEY: Right.

13 THE COURT: Right. So when is  
14 this ripe for an order?

15 MS. STANLEY: I think it's  
16 after the ten days. I don't have a copy of  
17 that one with me. I apologize.

18 THE COURT: Fourteen days. So  
19 after the entry -- after 14 days if there are  
20 no objections filed. And this is with the  
21 Court now.

22 MS. STANLEY: Oh, 14 days.  
23 Yes. Right.

24 THE COURT: Then you will look  
25 to the Court for entry of an order rejecting,



1 which is the proposed orders that we've been  
2 talking about that were provided that might  
3 have been attached but --

4 MS. STANLEY: That was attached  
5 in this first one but I won't do it in the  
6 next one.

7 THE COURT: The proposed order  
8 was attached to this one?

9 MS. STANLEY: I believe it was.

10 THE COURT: Well, I don't mind  
11 if you attach a proposed order. It's just I  
12 don't want to make anyone think it was my  
13 idea.

14 MS. STANLEY: I did that  
15 because there was that other sentence, that  
16 hidden sentence because I know you had crossed  
17 out --

18 THE COURT: Right.

19 MS. STANLEY: That hidden  
20 sentence in there said I had to submit one, so  
21 that's why I said it tripped me up.

22 THE COURT: Got it. And I can  
23 see why that would because I would have -- I  
24 intended to delete all references to that and  
25 obviously missed one.



1 MS. STANLEY: Yes. So then for  
2 my next one I will not submit a proposed  
3 order.

4 THE COURT: Okay.

5 MS. STANLEY: Or attach a  
6 proposed order but will just submit one.

7 THE COURT: Okay.

8 MS. STANLEY: After the 14-day  
9 objection period runs.

10 THE COURT: Great. All right.  
11 And this looks to me to be the same proposed  
12 order that I -- I've seen before.

13 MS. STANLEY: Yes.

14 THE COURT: So if there are no  
15 objections, then I would expect to enter  
16 something that looks a lot like it. But if  
17 there are objections, I would qualify the  
18 order to say for those parties who didn't  
19 object.

20 MS. STANLEY: Okay.

21 THE COURT: Their  
22 opportunity -- the rejection is final. Okay.  
23 Now we're all on the same page. Okay. So  
24 I'll -- I would expect to see more notices  
25 like the first notice.



1                   What's next? What can I look forward  
2                   to next?

3                   MS. STANLEY: Your Honor, they  
4                   are -- they closed six more stores yesterday,  
5                   so I am teeing up -- once we get this order  
6                   entered, I will be filing my second notice  
7                   that has probably 11 more stores on it.

8                   THE COURT: Okay.

9                   MS. STANLEY: And then next  
10                  week is going to be a flurry because they're  
11                  planning to get 80 stores closed or -- by the  
12                  end of March. So next week is going to be  
13                  very busy for them.

14                  THE COURT: Okay. All right.  
15                  Should I be expecting a plan? What will the  
16                  next steps be, Mr. Brakke or Ms. Stanley?

17                  MR. BRAKKE: We're still  
18                  contemplating what the next step should be,  
19                  Your Honor, to maximize the recovery for the  
20                  unsecured creditors whether it should be a  
21                  liquidating plan or whether this case should  
22                  be converted to Chapter 7.

23                  THE COURT: Okay. All right.  
24                  Is there anything else that the Court should  
25                  address today? Did I get all the motions I



1 was supposed to rule on? Sharon?

2 MR. KURTH: I think so. If I  
3 may add a comment, Your Honor?

4 THE COURT: Please.

5 MR. KURTH: I think from the  
6 committee's perspective, we would very much  
7 like to see a liquidating plan and liquidating  
8 trust established as something we -- the  
9 committee members have done frequently and can  
10 do that quickly and cheaply.

11 Also, as a heads up with respect to  
12 TGC, which is the subordinated insider loan, a  
13 \$5 million loan, we may actually require some  
14 discovery on that. We'll have to see. But we  
15 have attempted to get documents from TGC. And  
16 I understand, briefly put, they have a  
17 malpractice claim against a former attorney  
18 and are not in a position right now to  
19 voluntarily provide any documents so that we  
20 can understand what that lien is and deal with  
21 the issues such as -- in terms of what may be  
22 coming up. We're trying to find a  
23 constructive workaround, but I'm not sure  
24 because it's a very odd posture on -- that  
25 there is going to be a voluntary path forward,



1           so --

2                       THE COURT:   TGC has a  
3           subordinated claim?

4                       MR. KURTH:   They're  
5           subordinated -- okay.   So had paid Wells  
6           Fargo.   They have a \$5 million claim.

7                       THE COURT:   Secured claim.

8                       MR. KURTH:   Yes.   They  
9           perfected it in February, so a few weeks  
10          before the bankruptcy filing.

11                      So our position is, at a minimum, that  
12          that is something that we should be able to  
13          avoid as a preferential -- as a preference  
14          with respect to them.   And we're not sure what  
15          other issues are there.   We don't have -- we  
16          received a little bit of paperwork from the  
17          debtor.   It's just in terms of -- we may need  
18          some assistance because they find themselves  
19          unable to voluntarily comply.

20                      THE COURT:   Okay.   All right.  
21          So I might look forward to seeing an  
22          adversary.   All right.   Well, I will be in  
23          town, so whatever comes up, I am available.   I  
24          will plan to enter the orders that we  
25          discussed today.



1 Anything further?

2 MR. BRAKKE: Your Honor, I  
3 would anticipate that Wells Fargo and the  
4 debtor can provide a revised order on a cash  
5 collateral by the end of the day.

6 THE COURT: Sure. Yeah. And  
7 if you can't do it until tomorrow, I'm here  
8 tomorrow. Whatever works for you. So I'll  
9 postpone that one.

10 MR. BRANCH: Thank you very  
11 much, Your Honor.

12 MR. KURTH: Thank you, Your  
13 Honor.

14 THE COURT: Matter stands in  
15 recess.

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1 STATE OF MINNESOTA )  
2 ) ss.  
3 COUNTY OF WASHINGTON)

4 BE IT KNOWN, that I transcribed the  
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6 contained herein;

7  
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9 That the proceedings were recorded  
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25